



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2018-0128

RIN 1625-AA09

Drawbridge Operation Regulation; Ebey Slough, Marysville, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Burlington Northern Santa Fe Railroad Bridge 38.3 across Ebey Slough, mile 1.5, at Marysville, WA. The modified schedule would change the operating schedule of the Burlington Northern Santa Fe Railway (BNSF) Railroad Bridge 38.3 from on-demand opening to a four hours advance notice for an opening.

DATES: Comments and related material must reach the Coast Guard on or before [Insert date 45 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2018-0128 using Federal eRulemaking Portal at <http://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the

SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Steven M. Fischer, Bridge Administrator, Thirteenth Coast Guard District Bridge Program Office, telephone 206-220-7282; e-mail d13-pf-d13bridges@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
§	Section
U.S.C.	United States Code
BNSF	Burlington Northern Santa Fe Railway

II. Background, Purpose and Legal Basis

The Coast Guard is issuing this rule under authority in 33 U.S.C. 499. BNSF has requested a change to the operating schedule of the BNSF Railroad Bridge 38.3 across Ebey Slough, mile 1.5, in order to save on operating costs for the bridge. The proposed regulation will allow BNSF to not have a bridge operator attending the bridge until an opening request has been received. BNSF’s proposal would allow a bridge operator to be able to open the swing span within four hours after receiving a request for an opening. Marine traffic on Ebey Slough consists of vessels ranging from small pleasure craft, small tribal fishing boats and occasionally medium size pleasure motor vessels. There has been a

reduction in waterway usage following the City of Maryville's closure of the only upriver marina on Ebey Slough with very few bridge opening requests within the past three years. Only two marine vessel opening requests were received in 2017 and both were received longer than four hours prior to needing an opening.

The subject bridge currently operates in accordance in 33 CFR § 117.5. This bridge provides a vertical clearance approximately 5 feet above mean high water and approximately 16 feet above mean low water when in the closed-to-navigation position.

III. Discussion of Proposed Rule

This proposed rule would amend 33 CFR § 117.1059 to provide specific requirements for the operation of BNSF Railroad Bridge 38.3. These specific requirements are in addition to or vary from the general requirements that apply to all drawbridges across the navigable waters of the United States. This proposed rule reasonably accommodates waterway users while reducing BNSF's burden in operating the bridge. We have not identified any impacts on marine navigation with this proposed rule. An alternate route is available into Steamboat Slough via Union Slough at high tide.

IV. Regulatory Analyses

We developed this proposed rule considering numerous statutes and Executive order (s) related to rulemaking. Below we summarize our analyses based on these statutes and Executive order (s), and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O. 12866 and E.O. 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under Executive order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget. This regulatory action determination is based on the ability for the bridge to open on signal after receiving at least four hours advanced notice and not delay passage of any mariner. Vessels not requiring an opening may pass under the bridge at any time. An alternate route is available into Steamboat Slough via Union Slough at high tide.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in

section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this

proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive order 13132.

Also, this proposed rule does not have tribal implications under Executive order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental

Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2-1, paragraph (32) (e), of the Instruction.

A preliminary Record of Environmental Consideration and a Memorandum for the Record not required for this proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacynotice>.

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In § 117.1059 add paragraph (i) to read as follows:

§ 117.1059 Snohomish River, Steamboat Slough, and Ebey Slough; Marysville,

WA:

* * * * *

(i) The draw of the Burlington Northern Santa Fe Railroad Bridge across Ebey Slough, mile 1.5, near Marysville, shall open on signal if at least a four hour notice is given. The opening signal is one prolonged blast followed by one short blast. During freshets, a drawtender shall be in constant attendance, and the draw shall open on signal when so ordered by the District Commander.

DAVID G. THROOP

Rear Admiral, U.S. Coast Guard

Commander, Thirteenth Coast Guard District

[FR Doc. 2018-05701 Filed: 3/20/2018 8:45 am; Publication Date: 3/21/2018]